

***United States Court of Appeals  
for the Second Circuit***



**REPLY BRIEF**



76-7338

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

B

Docket No. 76-7338

EDWARD M. ALEXANIAN,

Plaintiff- Appellant,

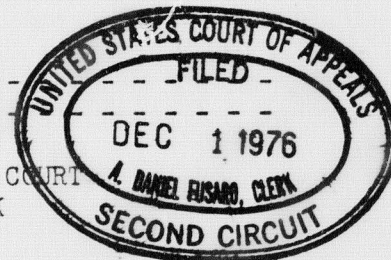
- against -

NEW YORK STATE URBAN DEVELOPMENT  
CORPORATION, et al.,

Defendants-Appellees.

P/S

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK



REPLY BRIEF FOR PLAINTIFF-APPELLANT EDWARD M. ALEXANIAN,  
TO BRIEFS SUBMITTED IN BEHALF OF THE DEFENDANTS-APPELLEES

EDWARD M. ALEXANIAN

c/o Mrs. Jane M. Alexanian  
2454 Tiebout Avenue  
Bronx, N. Y. 10458

Dated: Bronx, New York  
November 26, 1976

Tel: 588-2521

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Exhibits annexed to Reply Brief

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Lyons & Gates

Agreement dated December 31, 1970

Transcript of July 22, 1971

Transcript of July 23, 1971

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT  
-----

EDWARD M. ALEXANIAN,  
Plaintiff-Appellant,

- against -

Docket No. 76-7338

NEW YORK STATE URBAN DEVELOPMENT  
CORPORATION, et al.,  
Defendants-Appellees.  
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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK  
-----

APPELLANT'S BRIEF IN REBUTTAL  
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Preliminary Statement

As of November 20, 1976, submitted Briefs by Debevoise, <sup>Plimpton</sup>Lyons & Gates,  
Barrett Smith Schapiro & Simon and Mele & Cullen has been forwarded to the  
appellant by hand.

By appearance and written words, the appellant reiterates that DPL&G law  
firm, and by its counsel is the DEFACTO attorneys within the lower Court and  
this Court in behalf of all the defendants-appellees, as strongly indicated  
in all the moving papers relying basically upon the Medina affidavits, and the  
DPL&G Brief is repititious of the Statement of Facts submitted by defendant  
Judah Dick on a date prior to April 19, 1976, addressed to Honorable Judge  
Duffy. Since the appellant has raised the issue that the Statement of Facts  
was actually a statment substantuating legal costs to UDC for services

rendered by DPL&G (UDC v Alexanian) through to October 17, 1973, inasmuch as of that date all litigation with the lower State Courts had ceased, with several judgements in favor of the UDC. Unknowingly appellant did not know the past history of his retained attorney, and that he was candidate for eventual dis-barrment, however upon his dis-barrment by reason of a felony conviction, appellant retained new counsel to pursue in the Appellate Courts of New York. The Appellate Court ~~dismissed~~ denied applications and dismissed appellant's right to appeal and stood firm in its dismissal, thereby barring the appellant any further recourse. These facts have<sup>been</sup> related in the Complaint before the lower Court. Since the dismissal stood firm in both the lower State Court and its Appellate Division, appellant was not permitted under Federal Statute 28 USC 1443 (Civil Rights Cases) for removal to the District Court, hence a new formal Complaint was filed on December 19, 1975, which is now before this Court (SDNY 75 Civ 6340). Although amongst defendants who have been served process (diversity of citizenship), the Constitutional and Civil Rights provisions justify jurisdiction within the Federal judiciary and lower Court was in error in its Memorandum and Order on the ground that "the allegations do not make out any justiciable cause of action". The right to trial is basic in the Constitution, and a mere hearing does not constitute a

substitute for a trial on grave issues such as Preliminary Injunctions that automatically become Mandatory, with the effect of Permanent when a structure demolished (without due process).

Statement in Rebuttal

Appellant refutes both "Questions Presented" by the appellees;

(1) The District Court was absolutely incorrect in its dismissal of the Complaint, as portrayed by the appellees, i. e. " the lower state courts had decided contested issues of fact incorrectly "; absolutely false, Medina affidavit, sworn to on May 19, 1976, with its annexed Exhibit "C" dated July 22, 1971, drawn up and typed by DPL&G as an Order granting a Preliminary Injunction in the broadest form restraining the appellant, his wife, assigns, representatives, agents, employees, servants and attorneys, and all persons claiming under them or under thier direction and control, etc., etc., and on page two (2) of Exhibit " C " the following words have been penciled out;

" THERE BEING NO DISPUTED ISSUES OF MATERIAL FACT "

QUESTION?; on July 22, 1971, there was no issues, however on November 16, 1976, DPL&G states that the contested issues were decided and confirmed by UDC and attorneyes Mele & Cullen concur. Incredible that the Exhibit contradicts the Briefs. If there was no issues involved, why was an Order to

Show Cause obtained a day earlier (July 21, 1971)? Apparently the certified (#059679) letter addressed to Mr. Robert E. McCabe (UDC defendant) dated July 17, 1971 (4 days prior to OSC) which put the disputed issues squarely upon the UDC, as per quoted in the last two paragraphs:

Please take special notice, since there is agreement in force dated December 31, 1970, and executed on January 13, 1971 by all parties, kindly refer to my letter of May 17, 1971 and a check-list submitted on June 2, 1971, I herewith suggest the matter be reviewed by you in all its aspects and comply with it to the letter.

Upon completion of the building according to specifications and a suitable unbiased inspection thereof; and then a completion of the fencing as per required in the agreement, you will kindly give me written notice to complete my moving operation, respectfully, I remain,

Signed: Edward M. Alexanian

UDC, with its battery of attorneys gave the appellant written notice, yes by an Order to Show Cause and Injunction granted in less than 24 hours.

(2) DPL&G and UDC state "Where plaintiff has unsuccessfully asserted prior litigations . . . raised in the Complaint,"; absolutely false quotations,

(a) money damages in UDC vs Alexanian, Bx County Supreme Court, Index 14456/1971; case dismissed: marked off and closed. Present Complaint 75 Civ 6340

does not contain the same enumerated articles, money damages are limited to the inventories, equipment and property to the specific dates of occurrences of November 1972 and from February 13, ~~1972~~ 1973, and the remaining causes of actions to theses appellees within the scope exemplary damages. Nor did the

Complaint " Alexanian vs UDC, et al. " 72 Civ. 2748 SDNY and thereafter before this Court under Docket No. 72-1788 contain any money damages, however appellant reiterates emphatically that compounded movements began after Honorable Judge Brieant dismissed the Complaint, and upon the dismissal being affirmed by this Court, the defendants at the direction of UDC felt they had been given CARTE BLANCHE to proceed without further hinderence by the Courts, as hindsight appellant's attorney (was moving towards disbarment)\* was foot dragging with in-adequate prosecution to any all avenues within the judicial procedure that could have been obtained in behalf of the appellant.

\* ( Mr. Leslie H. Goldenthal (defendant) was an exceptional good trial lawyer, commanded respect amongst his peers in the legal profession, eloquent in speech, commanded attention during his addresses before the bar, has been commended directly from the bench by Judges, was extremely superior to his adversaries in the litigation of UDC, et al., vs Alexanian in all aspects of law and procedure, however on the other side of the coin, even those lawyers formerly associated with him, gave the highest praise of his knowledge and practice of law, he was dismissed from two law firms for monetary thefts (during his tenure as attorney for appellant). In view of the foregoing, appellant has reasons to believe the other side of the coin was hanky panky with one of the defendants of these actions (DPL&G excluded), without doubt upon a full trial (which has been denied), the conspiracy will unfold into the light. )

This Court will note that the relations between lawyer and client was strained, as evidenced that the appellant filed a Complaint with the District Court on June 28, 1972 (SDNY 72 Civ 2748) and following day June 29, 1972, he stood before Honorable Judge Brieant for signature on TRO, however within hours

appellant's attorney filed suit at Bronx County Supreme Court, under Index No. 14187/72, which was forced upon appellant because of extenuating circumstances, with additional costs other than agreed upon. \*

\* See recent decision by Honorable Mr. Justice John P. Donohoe, Westchester County Supreme Court of New York in a matter of a petition by the law firm of Marshall, Bratter, Greene, Allison & Tucker, under Index No. 11041/74 Linclon Steel Products, Inc. vs Robert Schuster, et al.

On October 4, 1976  
Cold Spring, N. Y.      Mr. Justice Donohoe castigated petitioner,  
eleven page decision.      Petition dismissed.

Although the heretofore mentioned decision has no bearing upon this case, however it is apro po in the over-all matter before this Court, as it quite apparent that appellees have from time to time referred to appellant's former attorney with reverence, thereby distorting the facts entailed between lawyer and client.      UDC's Brief at page 8;; (1) UDC, as a "political subdivision" of the State of New York . . . . . is just fine example to the 11 page decision rendered by Honorable Justice Donohoe, which could be applicable to the law firm of DPL&G, as more fully described in Exhibit <sup>1A</sup> ~~1A~~, annexed to the appellant's Reply Affidavit (Motion For Permission to File Typewritten Briefs) Sworn to on September 11, 1976, and excrept taken out of context: \*

\* Addressed to: Debevoise, Plimpton, Lyons & Gates  
320 Park Avenue  
New York, N. Y. 10022  
Attention: Mr. Standish F. Medina, Jr.  
cc: Governor Nelson A. Rockefeller

~~"It seems you delight in this action, in fact you can get more monies or extort same from project. UDC's need for~~

" It seems you delight in this action, because you can get more monies or extort same from project. UDC's need for property could have been had months ago, but then you would not have a windfall. "That it is estimated if UDC is unable to obtain the premises on which defendant operates his yard, it would result in additional costs or loss of savings exceeding \$100,000, perhaps as high as \$500,000, when you know very well that this thing could have been settled and was tentatively resolved before you instituted action on July 15, 1971."

The heretofore quotation, cupled with appellant's signed quotation gives a fair and accurate account prior to any subsequent hearings to be had (there was none).

DPL&G's Brief includes the opinion of Judge Loreto dated April 28, 1972, as it appeared in the NYLJ and marked as 7A; taken out of context:

There is no merit to the application to reopen the proceedings which resulted in the issuance of the order of July 22, 1971. Nor is there a proper showing to warrant the issuance of a temporary injunction against the defendant.

In the court's opinion, an examination of the defendant's actions and conduct in this matter as disclosed by the papers submitted and as revealed in the oral hearings had herein before this court . . . . is not made in good faith . .

The competence of DPL&G, its counsel, UDC and its lawyers, appellant's former attorney and last, but least the Court and its law assistants to flagrantly deny appellant's Constitutional Right to a Trial. (A) The injunction was sought by the appellant (defendant), not by the plaintiff UDC, injunction should have been granted to assure a trial upon the issues, but then again the Judge penciled out " THERE BEING NO DISPUTED ISSUES OF MATERIAL FACT ", and

personal attack upon the appellant (not made in good faith) was unwarranted, it was incumbent upon him to right the wrong. (B) it further states " the oral hearings had herein before this court "; absolutelty and positively not, there was only one hearing (July 22,1971) and that is indisputable, no where, or no how can appellees produce another hearing date. We are democratic country and its citizens do have a right to lodge complaints without the fear of repercussions.

DPL&G brief at page #8 (Medina affidavit #10) " as per sketch to be approved by Mr. Alexanian ". Here we have lie that was coupled with forged transposed initials of the appellant. This lie has been submitted to four Courts by appellee Mr. Medina. Mr. Medina submitted his papers containing Mr. Argiro affidavit sworn to July 20, 1971, before Standish F. Medina, Jr., Notary Public; " the sketch approved by Mr. Alexanian and attached to the affidavit of William H. Hayden as a part of Exhibit D.". Forgery by the art of transposing is a crimmminal offense and, if Mr. Medina by chance should repeat his often quotation on the witness stand, appellant would demand that he charged with perjury.

DPL&G brief at page #8 (Medina affidavit #11) " Mr. Alexanian was paid approximately \$14,000 . . . . Mr. Alexanian refused to give UDC access

to the building site. Mr. Alexanian's unjustified refusal . . . UDC in July 1971 initiated an action," (A) \$14,000 is figure in this Court and as submitted to the lower Court, however by his own words on July 22, 1971, Mr. ~~Medina~~ Medina stated the sum of \$7,000 in accordance to the transcript filed as Exhibit to appellants reply affidavit on June 10, 1976, and is hereby annexed as Exhibit "Transcript", taken out of context on page #11:

THE COURT: How much has he been paid?

MR. MEDINA: He has been paid so far seven-thousand by UDC and by the builder. Now, what we propose to do, your Honor, with the Court's consent, . . .

With the Court's consent, appellant is not considered, just a mere formality for his presence is required for the appearance of legality. (B) The figures of monies, July 22, 1971 ~~ix~~ it was \$7, 660, a year later an additional sum of \$111,000 appeared, in the Federal judiciary it is now \$14,000. Through out the full history of UDC and by its attorneys figures were manufactured in to the millions, losses of \$125,000 per week and so on. The crediabilty of the appellees have been shattered within the financial and polical communities. (C) Rebuttal to unjustified refusal: quotations taken out of annexed transcript, page #7:

MR. ALEXANIAN: Your Honor, may I stop you for a moment?

I have a piece of paper here that takes precedence of this particular motion that he has submitted to this Court. There is copy for the Court and there is copy which he has. He has already received it in the mail, which is dated before the papers.

MR. MEDINA: I have seen this, your Honor.

THE COURT: The papers indicate, sir, that since August and September of last year they have been negotiating with you in order to work out a plan and a method whereby they could proceed with this project.

MR. ALEXANIAN: Your Honor - - -

THE COURT: (Cont'g) And access over your property.

The appellant be damned, his certified letter (this brief page #1) was cast aside as meaningless (Medina: "I have seen this) and contrary to Judge Loreto's " The papers indicate ", how did he know what they wrote in the papers, when he never read them (Special Term Part 1 of Bx Sup Ct. has extremely heavy calendars), or was he briefed prior to filing of the papers. The appellant has raised that question of how he made a determination in less time it would take to read them. Where was the justification for a State Court to deny the appellant his Civil Rights and his Constitutional Rights to his property, with complete disregard of provisions of the Constitution, which he has sworn to uphold. The question is, the names UDC, DPL&G and the CITY, were they or

were they not, the factor of influence. Appellant is of the opinion that influence was the prevailing factor, as the certified letter and the transcript of that hearing speaks for itself.

On May 19, 1976, an affidavit sworn to by Standish F. Medina, Jr. relates a history of litigation, and by DPL&G's brief before this Court in its behalf and other appellees, who concur with its contents. Since the appellant is fully aware of their methods, appellant asks this Court to take exceptional note to the references to appellant's ownership, character and way ~~off~~ of life as depicted with malice to the detriment of the appellant by the appellees. The appellee Mr. Medina apparently qualified to practice law in all the Courts within the State of New York, however at no time during any litigation for UDC vs Alexanian, has he been qualified to make any determinations to business and/or ownerships of the appellant, nor any of the defendants-appellees been deemed for qualifications by any Court within the State of New York. To begin with the words "shack or decrept or old shack" which has been loosely and freely used throughout all litigation, including the present brief and affidavit. Those words is define appellant's ownership in demeaning manner for impact set in ones mind, which tends to influence and down grade the opposition, stripping of proud dignity, by devaluating his ownership and placing him into a defensive

position. Webster dictionary definitions of the words freely and loosely used by DPL& G's brief and the Medina affidavit:

SHACK: A hut; shanty,  
SHANTY: A small, mean dwelling, a hut,  
HUT: a rude small house, hovel,  
HOVEL: An open shed for sheltering cattle,

When adding old and/or decrepit, description would be deplorable. The same would apply to freely and loosely words used by appellees to appellant's business and premises, i. e., SCRAP, JUNK, SCRAP YARD and JUNK YARD, etc., etc. Appellant again refers to annexed transcript on page #7:

THE COURT: What kind of business do you operate there?

MR. ALEKIANIAN: An automobile wrecking yard.

THE COURT: Yes.

Certainally from date of that transcript July 22, 1971 to November 16, 1976, should have stand for correction, that is, if they were in error, it is no error, it is definete intentional to demean the appellant everyones eyes.

Washington had its WATERGATE; Bronx & New York Couties have thier HARLEM RIVER, with one exception ~~in~~ i. e., the WATERGATE lawyers did not steal nothing, kidnap no one or hold anyone in jail as hostage to legalize thier wrongfull acts, they were tried by Jury Trials and convicted for the violations of Federal Laws; under Crimes and Crimminal Procedure, "Chapter 55-Kidnaping" 18:1201 Kidnaping, as amended October 24, 1972, Public Law 92-539 of the United

States of America; USC 18: 1201; section (c) If two or more persons conspire to violate this section and one or more of such persons do any overt act to effect the object of the conspiracy, each shall be punished by imprisonment for any term of years or for life.

On November 8, 1972, 23A of DPL&G's Appendix of Decisions; thus reads " the Court having read the papers in support . . . . and the parties, by thier attorneys and witnesses "; Rebuttal: Complaint 137; at a secret and barred Court room, appellant was not permitted to testify; Question, was the appellant unqualified to testify as a witness in his defense. On November 20, 1972 the appellant was arrested on the following order dated November 9, 1972; out of

context; plaintiff be and he hereby is committed and directed to be imprisoned in the Civil Jail of the County in which he shall be apprehended, there to be charged with contempt until he shall have (a) removed the fence surrounding the Premises, (b) permitted UDC and its builders, agents, contractors and employees to enter upon and take possession and control of the Premises, and (c) ceased interfering with, impeding or obstructing, directly or through his agents, employees, representatives or attorneys, UDC's right to enter upon and use the premises; and it is further

ORDERED AND ADJUDGED that the Sheriff of the City of New York, to whom a copy of this Order of Commitment, certified by the Clerk of the Court, shall be delivered, shall forthwith and on receipt thereof and without further process take the body of Edward Alexanian, plaintiff herein, and commit him to the Civil Jail of the County wherein he may be apprehended, there to be detained in close custody until he shall have (a) removed the fence surrounding the Premises, (b) permitted UDC and its builders, agents, contractors and employees to enter upon and to take possession and control of the Premises, and (c) ceased interfering with, impeding or obstructing, directly or through his agents, employees, representatives or attorneys, UDC's right to enter upon and use the Premises, and until he shall be discharged by order of this Court or be otherwise discharged according to law . . . . .

Order unsigned without  
signature

Medina affidavit 22; Mr. Alexanian was arrested on November 20, 1972, and

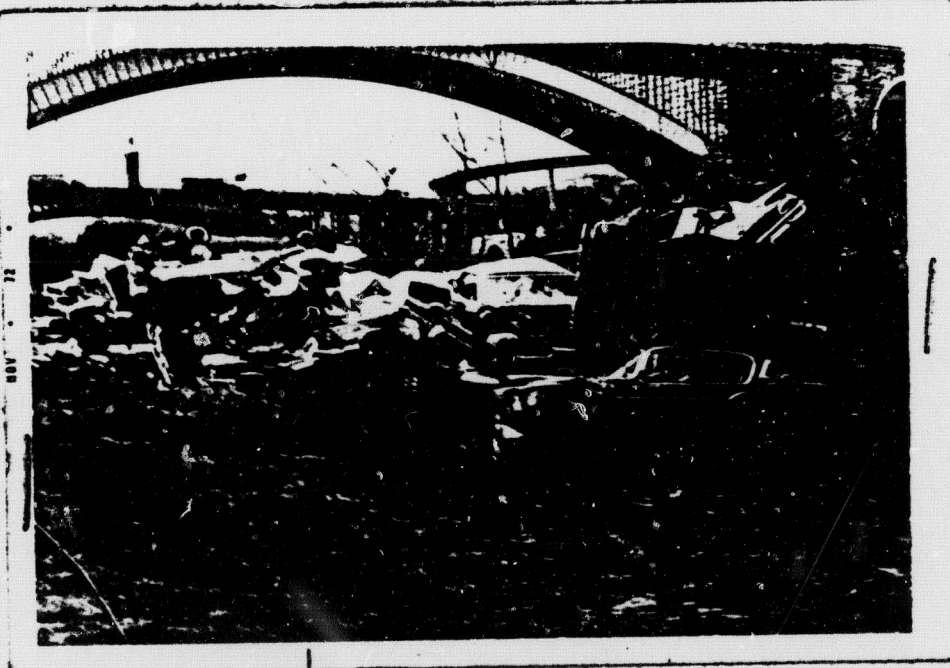
detained in custody until December 22, 1972: REBUTTAL; the heretofore

mentioned ORDER is specifically underlined by the appellant as to provisions set forth by UDC's attorneys, as per directed and blind loyalty to its clients, and as more fully described in its moving papers before the lower Court, and re-submitted in thier Brief before this Court dated November 16, 1976. Without doubt appellant was JAILED IN WRONG JAIL OF THE WRONG COUNTY, and furthermore appellant absolutely and positively (a) did ~~re~~ not remove the fence, nor was the fence removed upon his instructions; (b) did not permit UDC, et al., to enter, take possession and control of Premises; (c) nor was appellant in any position to interfere, impede, obstruct . . . UDC to enter upon and use the premises, ~~not~~ provision "C" is ruled <sup>out</sup> since appellant was in New York County Jail. QUESTION, after QUESTION; If appellant was arrested by four Deputy Sheriffs for failure to remove a fence (3 months to erect), nor permit to enter Premises; under whose orders ~~removed~~ was the fence removed and enrty upon the premises of that date of arrest and incarceration of the appellant; or was it the appellees deemed the appellant no longer a citizen of the United States, or was considered incompetent ward of the State of New York (UDC). Since appellant was not immediately released ~~upon~~ upon removal of fence and entry and more than twenty four (24) hours has lapsed (appellant was in close custody for ~~23~~ 32 days), the detainment under Federal Law becomes a charge of KIDNAPING, and there is <sup>no</sup> statute of

limitations are none exsistant. DPL&G, UDC, The CITY and most of appellees were aware of the incarceration of the appellant, and part of them were directly involved during the removal of fence, illegal entry and destruction of the appellant's personal ownerships, as shown on the photo copies mechanically



reproduced on this page showing a Classic four dr Chrysler "6" cylinder sedan being transported by a Cat Loader, then being smashed & finally placed in one ~~large~~ huge linear pile on Lot 22 of Block 2884; photo beneath portrays automobiles as they have rendered into scrap; landmarks can be seen as Geo. Washington Irving H. S., 181st Street Bridge, Alexander Hamilton Bridge & note top photo where telephone lines were cut to prevent communications from appellant's telephones for assistance, lines were restored two



days later by the New York Telephone Co. In the course of the years hundreds of photos has been taken of the area, before UDC and during the full length of litigation to March of 1973.

Reverting back to page #17 of DPL&G's brief (Medina affidavit 22);  
" detained in custody until December 22, 1972, when he was released pursuant to an Order of Conditional Release signed by Justice Loreto." QUESTION, upon QUESTIONS; UDC's attorneys initiate litigations with premature drawn ORDERS, as though they were Crown Prince's in an Autocratic Government, other than the United States, the finest example is the following Release Order;

At a Special Term, Part I, of the Supreme Court of the State of New York, County of Bronx, held at the Bronx County Courthouse, 851 Grand Concourse, Bronx, New York, on the 22 day of December, 1972.

← hand written

PRESENT:

HON. CHARLES A. LORETO,  
Justice.

----- -X  
EDWARD ALEXANIAN, d/b/a GILFORD  
SALES COMPANY,

Plaintiff,

- against -

NEW YORK STATE URBAN DEVELOPMENT  
CORPORATION and THE CITY OF NEW YORK,  
Defendants.  
----- -X

ORDER OF  
CONDITIONAL  
RELEASE

Index No.  
14187/72

The plaintiff Edward Alexanian having been committed to the Civil Jail on November 20, 1972 pursuant to this Court's Order of Commitment dated November 9, 1972 (a copy of which is attached hereto), and defendant New York State Urban Development Corporation ("UDC") having entered onto and taken possession of part of property (hereinafter referred as to the "Premises") located approximately between 172nd Street and 176th Street along the Harlem

River in Bronx County and consisting of Block 2884, Lot 72, and upon all prior proceedings had herein and after due deliberation,

Now, on motion of <sup>Jane Alexanian</sup> ~~Leslie H. Goldenthal, Esq.~~, <sup>w.f. of</sup> ~~attorney for the~~ plaintiff Edward Alexanian, it is hereby <sup>in the written matter, not legible</sup>

ORDERED that the Sheriff of the City of New York, to whom a copy of this Order of Conditional Release, certified by the Clerk of the Court, shall be delivered, shall forthwith and on receipt thereof release the body of Edward Alexanian, plaintiff herein, from the Civil Jail wherein he is detained; and it is further

ORDERED that if, after his release from the Civil Jail, plaintiff Edward Alexanian shall return to and be found by the Sheriff of the City of New York on the Premises, the Sheriff upon written notice from UDC and without process, shall forthwith take the body of Edward Alexanian into custody and, for the reasons and pursuant to the proceedings recited in the attached Order of Commitment, shall commit him to the Civil Jail, there to be detained in close custody (a) he shall have ceased interfering with, impeding or obstructing, directly or through his wife, agents, employees, representatives or attorneys, UDC's right to enter upon and use the Premises, (b) Mrs. Alexanian and all dogs shall have left the Premises, and (c) he shall be discharged by order of this Court or be otherwise discharged according to law.

Handwritten script;

ENTER: C.A.L.  
J.S.C.

True Duplicate

original for Sheriff

C.A.L.

12/22/72

/s/ S C

Here we have a Release Order, which is conditional, drawn up in the belief

that the appellant would confess judgement as noted in the typewritten heading

without the numeral day of December, 1972, and note that "Jane Alexanian, wife

of " was substituted, however this Release Order specifically states that a

copy of the Court's Order of Commitment is attached hereto (which they did not

do), which the Release Order, Commitment Order should have been annexed to the

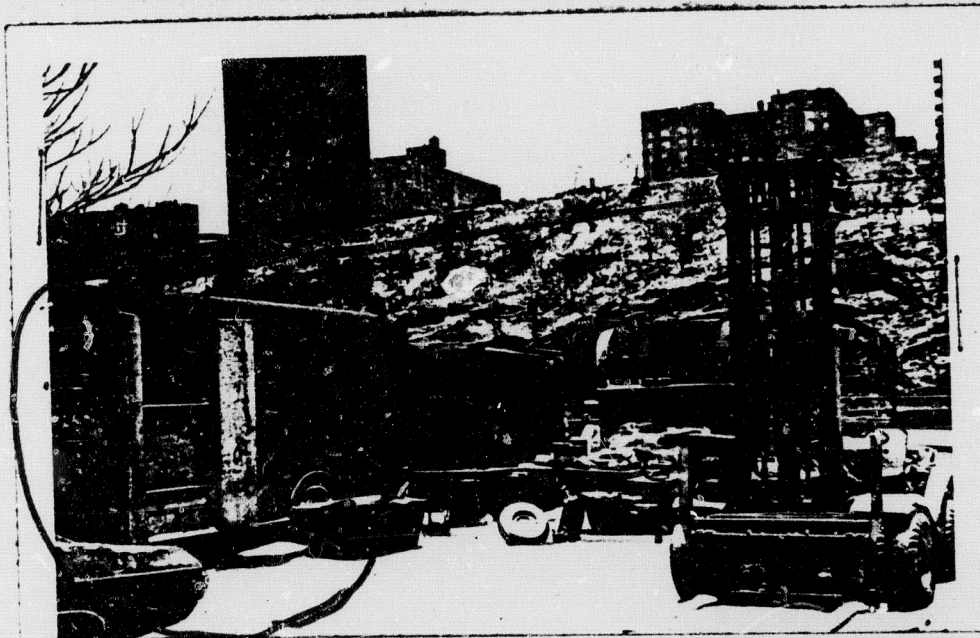
MOTION, (they did not, because there was no MOTION by Jane Alexanian, wife of) a typical Watergate Cover-up, with a State Judge involved, legalizing, illegal acts, then again no, the Judge did not write-up or issue the Orders, then again he is immune by State Laws. But this Alexanian matter, so riled up the Judge that he picked-up the telephone and threatened DPL&G or its counsel in very <sup>manner</sup> stern ~~matter~~ "RELEASE ALEXANIAN or I WILL", thereby someone with two left feet of DPL&G, fouled up on the MOTION, RELEASE ORDER and ORDER OF COMMITMENT, the cover-up was as bad as the WATERGATE BURGLERS (convicted), apparently the Alexanian matter upset the Judge so much, that he was away from his chambers, sick at home. DPL&G, UDC, the CITY with all its attorneys know very well that the State of New York can not be sued for its wrong doings, nor can you sue the City of New York (Claims to Court of Claims & file a Claim within 90 days with the CITY), however the heretofore mentioned Orders clearly and specifically comes under Federal Statutes of " Crimes and Crimminal Procedure ", Chapter 55 - Kidnaping; Section : 1201 (a), (1); (b) & (c) as amended October 24, 1972, Public Law 92-539, Title 11, : 201 Statute 1072, and there is no Statute of Limitations. Here we have a governmental body (UDC) within a government (State of New York) more powerfull and clout (1968-72) than the parent that created it, that it set its vengeance upon an individual and his

(appellant) wife, by one person employed by UDC (in olden days he would have been considered a COURT JESTER) who pushed the panic button before the agreement's ink was dried (annxed to Complaint) and apparently was instrumental in setting the legal machinery at full speed ahead, we must bear in mind and<sup>not</sup>/lose the fact that UDC was government within a government, whereby all doors and avenues opened for them and was closed tight against the appellant by Courts, State & County Attorneys and Police enforcement. The United States Government (HUD) was the money well-head for UDC with millions, upon millions of dollars being poured into UDC ventures for subsidies and subsidising the UDC mortgages (another point on juristicdñion).

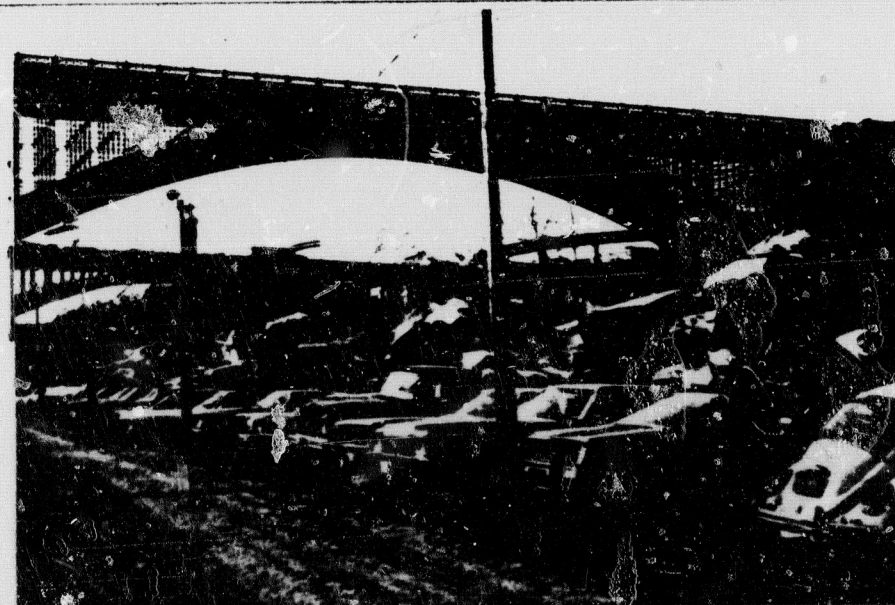
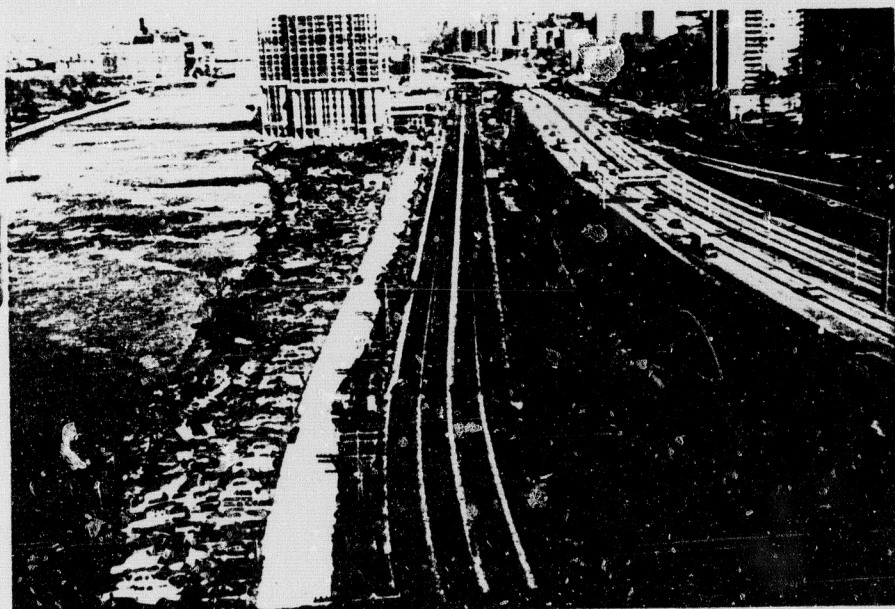
#### ARRGUMENT IN REBUTTAL

DPL&G at brief #24; citation of Lewis v. State of New York, Docket No. 72-2061 (2d Cir. October 27, 1976). The case on is not against the State of New York, but against individuals and corporate structures and they are not immune to law suits. Appellant was advised by the Pro Se Clerk of the lower Court, i. e., "Write up your story" . . . . "We believe you" . . . . "Exhibits are not necessary". Honorable Judge Duffy was wrong and in error in his conclusion that " the allegations do not make out any justifiabile cause of

action " and, the appellees absolutely and positively wrong in attitude of  
thier two "Questions Presented" of the ambiguous Order of Judge Duffy, with the  
Carte Blanche viewpoint that " The District Court answered the first question  
in the affirmative and therefore did <sup>not</sup> expressly reach the second question ".  
Judge Duffy should have explored every facet within the Complaint, and upon a  
oral hearing, appellant would have produced EXHIBITS that would have over-  
whelmed the appellees to stampede for suitable confessions of judgements, the  
mere statements of denieals can not hold up in a trial, false, untruthfull and  
perjured affidavits would be shattered in a trial. Upon exploration by  
Judge Duffy, would have brought out the often question of the residence of the  
appellant, and the appellant stands fast on his position that he is a native  
born citizen of the United States, whose parents were immigrants and died as  
aliens, without ever attaining citizenship of the United States, however the  
appellant's place of residence since July 28, 1971, except it has been moved  
from time to time. DPL&G's co-appellees have taken many photographs of the  
appellant residence, by engaging professional photographers, over the object-  
ions of the appellant. DPL&G and thier co-appellees knew then and now that  
appellant's residence was in the Van Type Office, which was towed away as more  
fully described in Complaint 196 & 197, mechanical reproduction, next page,



Circled Van Type office  
Has been home & residence  
of appellant since July  
28, 1971, affidavits sub-  
mitted behalf of UDC is  
documented. The next  
reproduction is a photo  
left to right, Harlem  
River, pile of vehicles,  
UDC cars parked facing  
roadway, Penn-Central R.R.  
Magor Deegan Expressway,  
ramps from Geo. Washing-  
ton Bridge & Cross-Bx  
Expressway, Sedgwick Ave.,  
Center top of photo is  
UDC construction building  
left of bldg is Con Ed  
plant.



Facing south on  
reproduction- parked cars  
are UDC, cars piled upon  
arrest, remaing poles are  
for lights & telephone,  
fence pñles removed that  
were for fencing of Lot  
22, Block 2884



Facing south in reproduction; fencing shown is remainder of Block 2884, Lot 50; cars shown beyond fencing, opposite poles are all UDC connected, on far right is elevator for aqueduct (water) tunnel, Geo. (181st Bridge) Washington Bridge and beyond is Alexander Hamilton

Bridge. \* \* \* \* \*

Facing north; access roadway; UDC connected cars; left of them, cars piled up, directly north, UDC building (construction).

\* \* \* \* \*

Facing south, appellant's cars piled-up, cars in foreground are all UDC connected.

\* \* \* \* \*

Each and every reproduction is available through its counsel DPL&G, as copies were given to them by motion (Appl. Div.)





Facing south on both reproductions; top photo right top is the Krater Houses with air rights over roadway leading to Geo. Washington Bridge that spans the Hudson River; both photos shows a true description of UDC & DPL&G's moving papers of a "Junk Yard" looks After took possession on November 20, 1972, with appellee's LOADER shown working on page #15 of this Brief earnesting moving appellants cars and rendering them into heap of SCRAP. Appellant

reiterates that not one of the appellees have/<sup>been</sup>qualified to make any comments regarding appellant's ownership and/or the conducting of his business, no where, no how, has the appellant at any/<sup>time</sup>advertised to purchase and/or sell his automobiles, trucks, equipment, parts and/or related materials as either junk and/or scrap, appellees, whether, attorneys, engineers or executives were not licensed to demean the character of the appellant in any COURT.

Now within the next few pages are authentic reproduction of the appellant's ownerships, that have been defined by the so called unqualified experts (appellees), described as Junk, Scrap and decrepit, adding the words of automobile and yard. The unwarranted attacks by demeaning terminology ~~and~~ over the course of years, right into this Court is inexcusable.



Here we have a stock piles of Automotive Generators, Strating Motors, Mounted Tires on Wheels & Sheet Metal Parts.

\*\*\*\*\*

You will note in this reproduction a very large quantity of Stainless Steel Hub Caps, or manufactures proper name of Wheel Covers. In the background you will note quantities of Automobile Windshields (glass), upon closer examination you will note Automobile Mufflers and Exhaust Pipes.



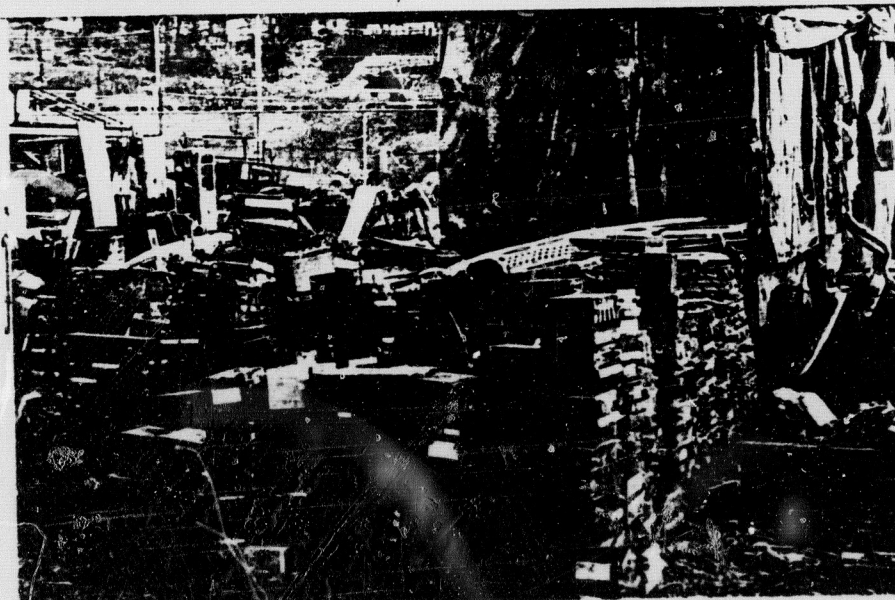
The Wheel Covers, Windshields, Mufflers & Exhaust Pipes reproduction was Taken from a different angle, facing West and the Harlem River.

\*\*\*\*\*

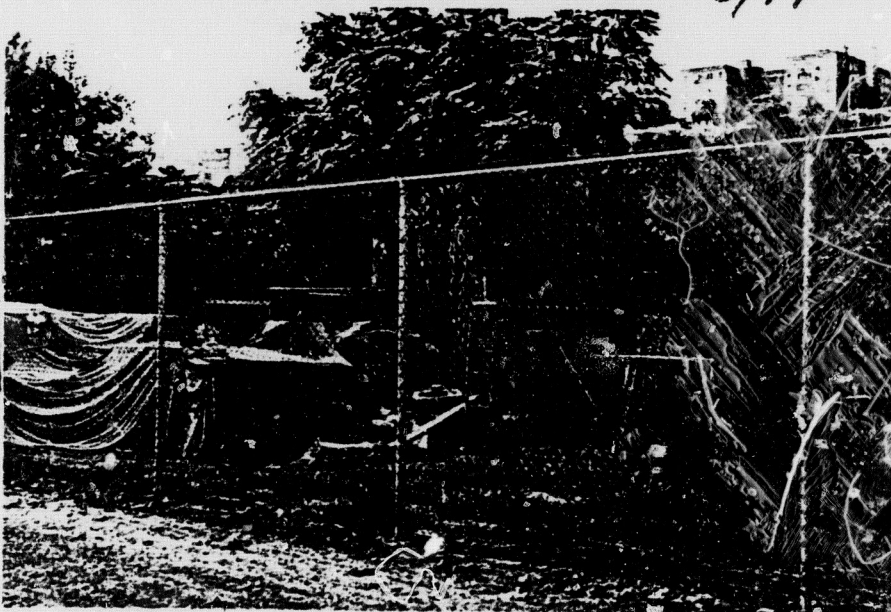
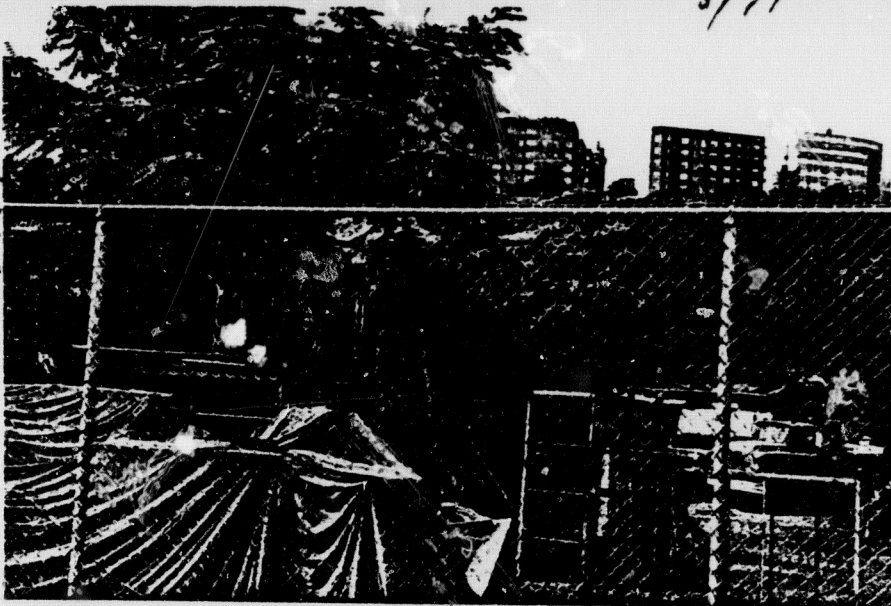


This photo reproduction is facing West, which is mostly Automotive Windshields which was covered with snow

\*\*\*\*\*



In the foreground facing East, you will note the stock pile of Automotive Batteries, directly behind a huge stack of cases with Starting Motor & Generator Flushing Compound (covered with canvas); to the right you will note Automotive Fuel Tanks (gasoline), the upper part shows fencing, a Motor Vehicle on the Major Deegan Expressway



These two reproduction of photos were take on August 1971. They show appellant's ownership that was placed out into open, covered by canvas (rips & holes) that supposedly was keep it secure from weather elements i. e. rain, wind, snow and Sun. The inventories of small parts new and used was placed there by appellees, in direct violation of thier own drawn up INJUNCTION, which was signed by Judge Loreto (no signature, but appellees are immune, have been immune, ORDERS must be obeyed by appellant, ORDERS are not applicable to the appellees.

\*\*\*\*\*

This shanty was first ransacked of personal belongings papers, cabinents of Test Equipment, etc, then leveled by bulldozer.



The Court will please take particular note of these 3 photo reproductions. One to left, faces north, take notice of Crane.

\*\*\*\*\*

Facing South, take note of height of Automotive Engines towering the height of the Crane, foreground Automotive Radiators. Landmark beyond Crane & Engines is GEROGE WASHINGTON MEMORIAL BRIDGE (181st) spanning the Harlem River.

\*\*\*\*\*

Facing North, Landmark above Crane, Automobiles, Stock Pile of Engines, etc is the WASHINGTON IRVING HIGH SCHOOL, which is Manhattan. Take particular note of Trees within the area.





Please particular note of top photo reproduction of two Trailers (Tires, parts tools stored), left of the Trailers are stock pile of Tires mounted on Wheels.

\*\*\*\*\*

Facing North, note height of stock pile of Engines towering Crane, beyond that note landmarks of Old Age Home & Washington Irving H. S.

\*\*\*\*\*



Facing West, Crane, Stock Pile of Engines, foreground Backhoe attachment for Crane, Cement Mixer and above Crane & Engines are Apartment

House Dwellings which are in Manhattan (New York County). Coming East from the Apartment Houses is a very wide spacious PARK, the Harlem River Driveway (Dycman to 155th Street), the Harlem River that touched Appellants Premises.



Whithout question the following photo reproductions, gives positive indications why all the appellees have been silent and ambiguous in all thier moving papers. ORDERS, upon Orders, CITATION after Citations have been cited, in thier Motions and Briefs, however not one of them has been able to produce any ORDER and/or Memorandum of Law to off set the following unlawfull acts.



On February 13, 1973, the appellees as recited in the Complaint began thier methodical operation of confiscation of appellant's ownership, with the apparent consent of the titalar head of UDC, and concurred by its legal staff. Civil Rights to be damned, Constitution with all its provisions swept away. Appellant must be destroyed beyond recovery monetarily.

\*\*\*\*\*

The next three reproductions facing South, take particllar note in the



manner of operation to torment appellant, cause for provocation by the willful deliberate method of destruction, reproductions on pages 27 & 28 of this Brief concrete proof of conspiracy to destroy the appellant.

\*\*\*\*\*



Photo reproduction facing EAST; note the disarray of Wheel Covers in contrast to pages 24 & 25 of this Brief. The manufacturer's list price is as much as \$15.00 per wheel cover.

\*\*\*\*\*

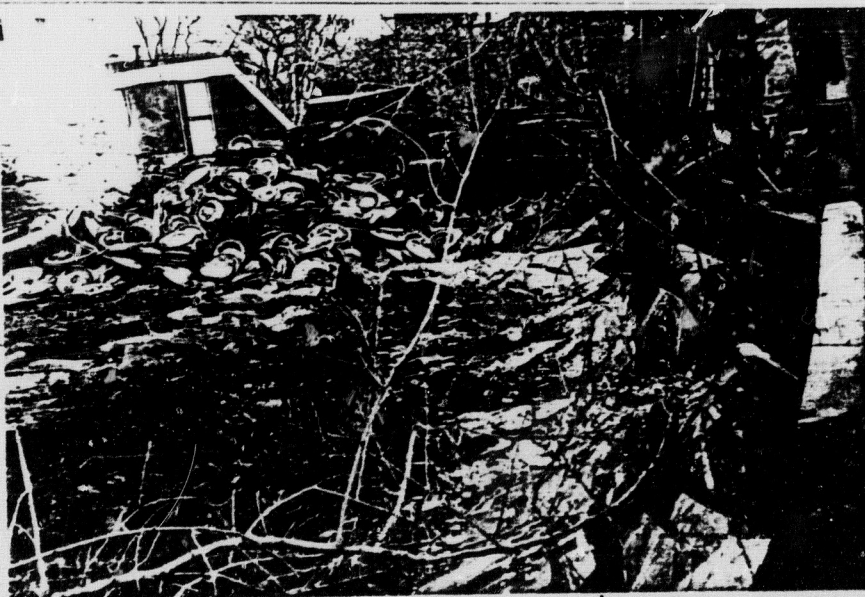


Photo reproduction facing EAST; shows the crushed Windshields in foreground ground into the earth, Wheel Covers also crumbled up under the pads of the Bull Dozer rendered into Scrap



Photo reproduction facing South; in contrast to the pages 24 & 25 of this Brief and take exceptional note of the crushed WINDSHIELDS, manufacturer's list price per windshield is as much as \$100.00 each, furthermore there is no such thing as used WINDSHIELDS, they are good or bad; when considered good, it is equivalent to new.

\*\*\*\*\*

Photo reproduction facing WEST; destroyed Windshields near the bank of the Harlem River.

\*\*\*\*\*

Photo reproduction facing WEST; Trans-Land Excavating & Trucking "Bull Dozer" with assistant walking for immediate directions of the operator on remains of a Truck chassis.





Photo reproduction facing EAST; this extreme north-east portion of Block 2884 Lot 72; see page #28 of this Brief of Trailer before it was destroyed by the appellees Bull Dozer. This Trailer was roadworthy to move.

\*\*\*\*\*

Reproduction facing NORTH; Rear of Trailer is within twenty feet of appellee's Mobile Office, note the contrast to page # 28 of this Brief.

\*\*\*\*\*



Photo reproduction facing NORTH; note Tree in background and crushed Valiant Automobile in the foreground and complete destruction of Trailer, rendered useless. Under microscopic lenses it will show Tires protruding out from where they were stored inside the Trailer.



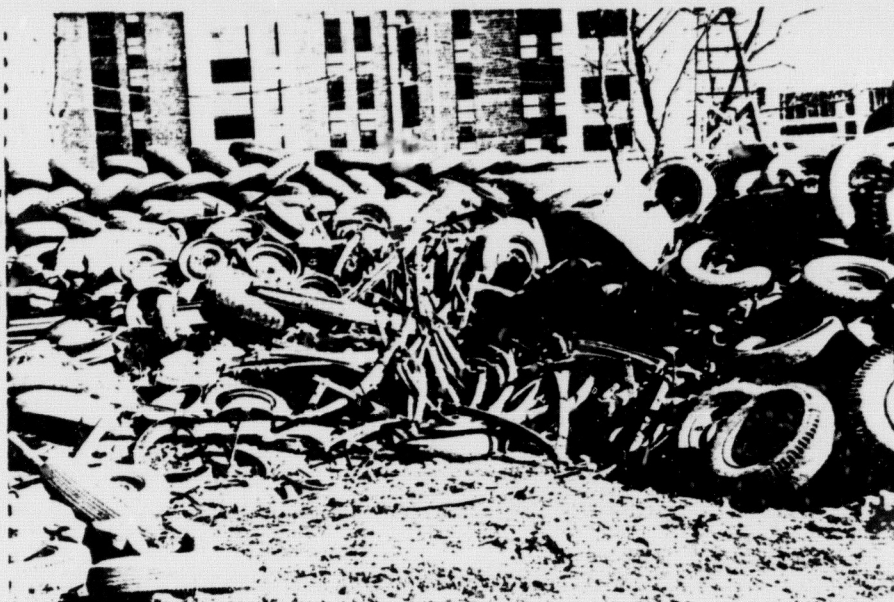


Photo reproduction facing NORTH; background UOC's building, foreground with tires, wheels, springs, bumpers intermingled with each other. distrubtion was deliberate to render anything and evrything into scrap.

\*\*\*\*\*



PHoto reproduction facing WEST; background to left is the YESHIVA SIENCE BLDG, in foreground is overturned Trucks belonging to appell- ant. Bull Dozer in the center.

\*\*\*\*\*



Photo reproduction facing NORTH towards Harlem River; right rear note that Tires on wheels are ~~WELDED~~ woven for proper storage, foreground is the results of appellee's Bull Dozer smashing and disturbing everything in sight and/or at given order.



Photo reproduction facing NORTH-WEST; the remains of one Trailer and three Trucks that was rendered into scrap by appellee UDC and other un-named persons or Corporations.

\*\*\*\*\*



Photo reproduction facing WEST; in foreground is the remains of three Trucks, background is International Half-Track Vehicle, with mounted Hydraulic CRANDEX Crane.

\*\*\*\*\*



Photo reproduction facing NORTH; Bull Dozer in operation pushing a Truck and in foreground right is a International Boom Truck which belonged to the appellant.



Photo reproduction facing WEST; Dodge Step in Van, with parts, cabinents, tools, overturned on February 13, 1973, with the subsequent arrest of appellant's wife on Crimminal charges placed by appellee Salomine.

\*\*\*\*\*

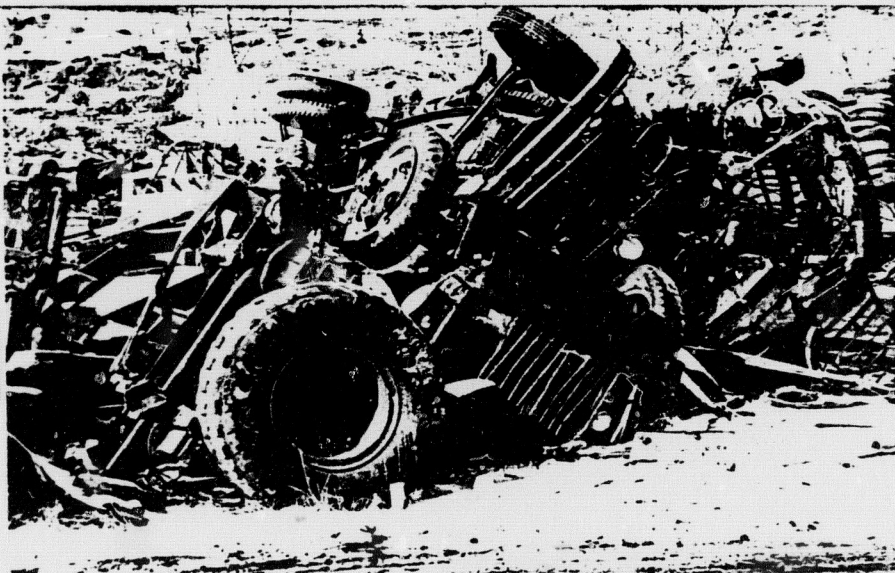


Photo reproduction facing WEST; the remains of one Trailer and three Trucks rendered useless.

\*\*\*\*\*



Photo reproduction facing NORTH; appellee-Pascap's Tractor-Trailer being loaded by Bull Dozer from the left. Appellee first denies involvement, then moves by Motion to Dismiss through its counsel. Now appellee or its counsel has lied to the lower Court, the photo reproduction can not tell lies, nor B/ladings.

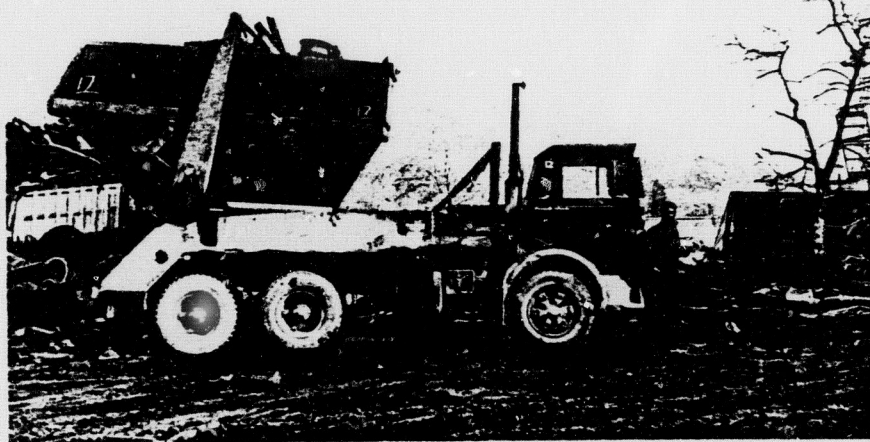


Photo reproduction facing NORTH WEST; appellee Pascap ownership, Container Truck No. 12 and Container No. 17, with driver obligingly posing for camera while awaiting hydraulic lift to place Container for traveling purposes with load.

\*\*\*\*\*

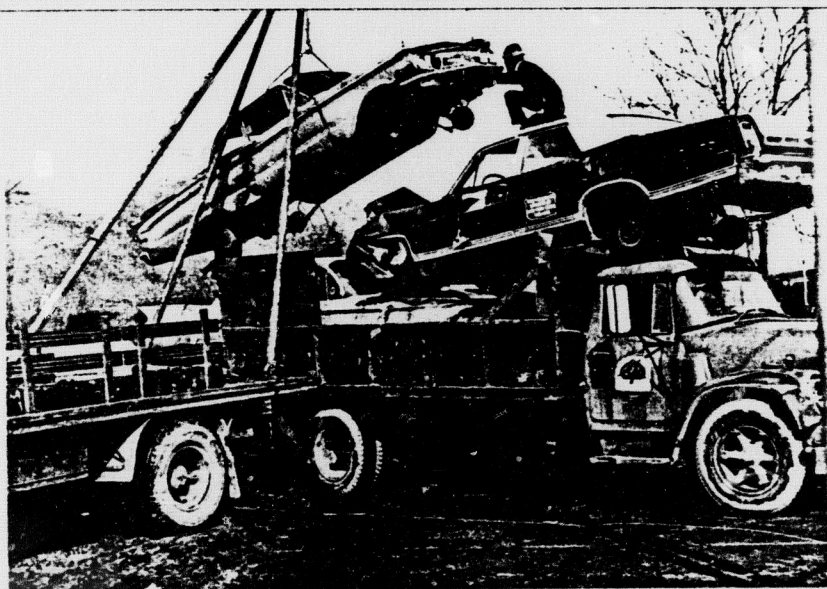


Photo reproduction facing NORTH; un-named appellee loading three of appellant's automobiles onto thier Truck, which was taken away.

\*\*\*\*\*



Photo reproduction facing NORTH; un-named appellee's worker cutting off scraper-plow from WALTER's Truck-Crane (tow), which was then taken away by appellee Brookfield, without consent or authorization of the appellant.



Photo reproduction facing NORTH; appellee Brookfield towing away appellant's WALTER's Cinder Spreadre Truck, without consent or authorization.

\*\*\*\*\*



Photo reproduction facing NORTH; appellee Brookfield towing away appellant's INTERNATIONAL Camel Back Boom Truck, which contained Electric Motors & small equipment on the body of the truck, without consent or authorization of the appellant.

\*\*\*\*\*



Photo reproduction facing SOUTH; appellee Brookfield towing away appellant's Chevrolet Combination Fire (water & foam) & Tow Truck, fully equipted for road-service. All movements by appellee was without consent or authorization by appellant

CLOSING STATEMENT IN REBUTTAL

Appellees briefs concur with the DPL& G brief, heavily relying upon submitted motion of DPL&G, with its annexed affidavit of Standish F. Medina, jr., together with its exhibits attached thereto. Appellees have submitted briefs containing overwhelming citations of many, oh so many cases within this Court, the District Court and the State Courts. Appellees recite continuously latches, latches and more latches, never once has equity (appellant's) been brought in as provided " UNDER DUE PROCESS " of our Constitution, but nevertheless, appellees have argued in all the litigation thus far on one basis only " LATCHES " and, appellees seem to have forgotten conveniently that latches can never overcome EQUITY. Absolutely and positively not one of the citations can hold up in this Federal litigation, including often quoted citation of Honorable Judge Brieant's on June 29, 1972. This Court should bear in mind that there is a DISBARRED ATTORNEY involved in the prior litigation, and there been many, many incidents that prompted the appellant to go before Judge Brieant. This DISBARRED ATTORNEY is a key factor by permitting the conspiracy to get out of hand, which was formulated long before he was retained by the appellant, however he was seasoned enough to recognize it, and

should have stopped it cold immediately in February 1972, when he was unlawfully detained by certain appellees agents, which he did not. However after his DISEARMMENT, appellant made partial investigation of Mr. Goldenthal and, came up with many revealing factors of his honesty and integrity with his brethren in the offices that he had used for his law practice coupled with his employment. Honesty and integrity he did not have. On November 2, 1972, Mr. Medina mentioned a remark to the receptionist at the offices of Bronx County Supreme Court, which led to chambers of the Judges. This remark was made while we were all waiting for the arrival of Mr. Goldenthal. At the particular time the appellant did not fully understand it, nor did he understood the remark Mr. Goldenthal made " MEDINA SAID YOU THREW IN THE TOWEL ", meaning that the appellant withdrew his appeal from this COURT to the United States Supreme Court. In drawing up my brief and constant research on the motions, affidavits, orders, files (past & present), appellees briefs, Honorable Justice Donohoe's letter and decision, appellant received a letter from ~~xxx~~ Mr. I. D. Robbins in long hand on November 24, 1976, appellant is firmly convinced that the conspiracy was in full bloom at all times. Knowing that this COURT is on appeals only, appellant reverts to the record only within the

present Complaint.

The appellant reiterates that the appellee UDC and the CITY committed Fraud in the agreement they entered with appellant on January 13, 1971, and dated as of December 31, 1970, agreement is herein annexed as "Agreement" which was annexed to the Complaint. The focus is upon the " TREMONT AVENUE BRIDGE " which was the crux of the original litigation, Civil and Supreme Courts of the State. Rather than be repititious, has annexed the Hearing of July 22, 1971, as " Transcript ", which was annexed to appellant's Reply Affidavit in response to DPL&G's motion, filed on June 10, 1976, and the heretofore statements stands. The appellant refers to " transcript of hearing held on July 23, 1971 ", which was annexed to the " transcript of July 22, 1971 " and is hereby annexed as " July 23, 1971 Transcript ". Appellant cites the following from " July 23, 1971 Transcript ", taken out of context;

THE COURT: Mr. Medina, last night I know you tried to reach me by telephone at my residence . . . . you reached my secretary

The papers adequately indicate that the defendant has done all in his power to impede, obstruct . . . agreements have been entered with him, . . . to permit the opening of this pathway so that the heavy vehicles could go through to the site which can not enter the south from any other avenue or approach, including Tremont Avenue; that he was paid seven- thousand ~~dollars by the plaintiff~~ (\$7,000.00) dollars by the plaintiff . . . . dated it, and put the time - 7-23-71, 11:00 a. m.'

I do hereby certify the foregoing to be true and accurate. Emily A. Davis, Offical Reporter

DPL&G was present at the Civil Court, drew-up the annexed " Agreement ", ~~xxx~~ was at the Hearing of July 22, 1971, annxed as " Transcript ", and did make the overtures for the uncontested Hearing as annexed as " July 23, 1971 Transcript ", the annexed "Agreement, Transcript & July 23, 1971 Transcript" speaks loud and clear as to \$7,000.00, not \$14,000.00, that UDC did have access and appellant did not refuse UDC access, that Judge Loreto almost repeated the whole address of Mr. Medina, in upholding the appellees, i. e. after disposing almost 100 matters of the Calendars of July 22 & 23, 1971, and latches can not erase the record. The record stands, it speaks for itself. With all the orders obtained by the appellees, not one gave them right to enter appellant's premises to destroy appellant's properties, nor to confiscate the appellant's properties, nor to hold him/<sup>in</sup>prison for ransom (for signature), nor would any Judge in the United States would stand for ransom and piracy, which would include justice of peace (Judge without portfolio).

The Constitution of the United States that the appellant has right to have a Trial, hearings are not trials, it guarrantees him freedom and due process of law, hearings without trials shall not deny freedom and due process law, without doubt appellant has been denied both freedom, his liberty, his

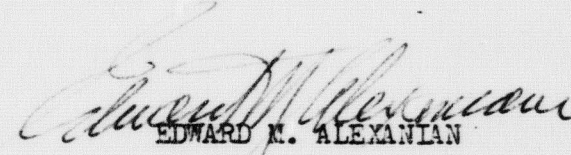
properties and has been destroyed in the most cruel inhumane manner.

CONCLUSION

For reasons stated heretofore, appellant respectfully submits the the appellees did not substantiate un-warranted dismissal of the Complaint by the District Court. Failure to annex some 100 to 200 exhibits to the 28 Causes of Action of the Complaint for substantiation of the related facts therein described, was at the instance of the District Court's Clerk (pro se) " Write up your story . . . . we believe you . . . . exhibits are not necessary ". Appellant respectfully submits that this Court should reverse the lower Court's dismissal and remand the case back to June 18, 1976, awarding judgements against appellees New York State Urban Development Corporation, City of New York and Pascap Scrap Iron Corp. and, award the appropriate costs for the appellant, against the appellees that be just and proper.

Dated: Bronx, New York  
November 26, 1976

prepared, written and  
typed by the appellant.

  
EDWARD M. ALEXANIAN

c/o Mrs. Jane M. Alexanian  
2454 Tiebout Avenue  
Bronx, N. Y. 10458

Telephone: 588-2521

Exhibit "1A"

Mrs. Jane M. Alexanian  
2454 Tiebout Avenue  
Bronx, N. Y. 10458

Late June or Early July,  
1972

Debevoise, Plimpton, Lyons & Gates  
~~320~~ 320 Park Avenue  
New York, N. Y. 10022

Att: Mr. Standish F. Medina, Jr.

Copy to Governor Rockefeller

Mr. Medina:

I shall say Sir; because it is beneath my dignity to use profane or make rude remarks to you, as I do not know you and, I have never met you in person, nor did I wish to.

I am taking exception to every thing you say cause I take it from whence it comes.

You say that the "motion for a stay" was brought in bad faith. How could you sign your name to such lies, "that it would do irreparable damage to Plaintiff UDC and also, telling the Court that even were such a stay appropriate that this Court lacks jurisdiction to award the relief requested. You mean to write that you, as an Attorney are Almighty God and can dictate to the Court. What kind of a farce is this? How dare you, are you not afraid of the Law of retribution.

You state that defendant "Edward Alexanian" operates a scrap yard on the southern portion of the property which is leased by UDC from City of N. Y. and which UDC is building a major project. Is this not a lie? Are you not using the roadway that we have maintained for 24 years with cinders and gravel, to gain access to property north of us on 176th Street & Harlem River, Bronx, N. Y. in cooperation with the Parks Department. And is it not so that we have maintained this road all the way down to 171st Street; and also that from 169th Street & Depot Place that the service road leading to ours was never and still isn't a thoroughfare. You claim we have no rights to remain on the premises and you make the UDC so puritan to allow us to stay.

Did we not, in fact accept an agreement with the UDC only to get out of the clutches of N.Y.C. R. E. Dept. only to jump into the fire. Did you not threaten, coerce and belittle my husband and me and at the same time accept my services for watching your premises for over a year and you hired Lance Guards. You paint a very bad picture of my husband when, you know in all your life you have never met a man like him, who places principal before anything else, a very proud man indeed. You constantly insult, threaten, harrass and belittle him. Mr. Medina if you should live and attain the same age as he, you will grow ugly, because your attitude is ugly. And did not the UDC break its agreement when it agreed to build a building equivalent to the one you disposed of, and maliciously threw us off, which was brick and you call it a shack. Isn't what you built, a painted glorified plyscore wood shack. Certain monetary payments were made to defendant, right. Now isn't it ridiculous for him to have turned down \$25,000 for the meager payments you have made. Also, isn't it so Mr. Alexanian was coerced and sick and practically numb when he went to Court when he agreed with the City of New York to a Stipulation to a filing of judgement of eviction against him in a proceedings and at that time he had no attorney and was wholly taken advantage of. And another thing when Mr. Alexanian signed up with Mr. DeMatteis, that was for time and labor to get over faster which was nothing to do with UDC agreement, that is what Mr. DeMatteis said. You mean to say that you have to resort to tactics like this to prove you are a better man than mine. You ought to be ashamed of yourself, a learned man, working for such a large concern, putting your education against a proud man with an (8th grade education). Your company receiving all that money and denying my husband his rights and a day in Court. You also said we interfered with completion of roadway and you know that is not true, as matter of fact, I even pushed the wheelbarrel. Mr. Alexanian complained on how slow you people were working, isn't that not so?

You state that on April 15, 1971, defendant UDC, Builder DeMatteis signed agreement which modified agreement, but this did not exclude the original agreement with UDC if this were so. You know UDC failed to erect building in proper place so as to allow us to work. Yes you have a 6 foot fence north to south, but east to west, it is open, to this day and never constituted security because of the fence end so you can walk right into our yard and is why we have had our shepards confined at night too, in an arrea in the yard.

You continually lie when you say in July, UDC intiated this action to restrain defendant from interfering with completion of access roadway. Mr. Alexanian in fact wrote a letter to Mr. McCabe saying that if they didn't continue with thier work, he would take UDC to Court, becaues they did everything to harass us, they made holes in the middle of 25 foot roadway without filling for days and certain trucks went back and forth harassin us and causing my business to practically die and resulted in monetary hurt, yes you did and that looks like your style. The building was supposed to be strong, with a pitched roof so that we can collect rain water, as we have never had running water for over 24 years and Mr. Alexanian was not found in contempt. Judge Loreto said that if he didn't do what he said, he would be found in contempt. He even mentioned of putting me in jail and take my animals to the pound. Could you imagine what a strain you put on that mans mind, that he walked with all of you and had no senses. So you did it but in the "Eyes of God" We shall see. Incidentally Mr. Medina, have you got a home of your own? It should be as strong as ours so called (shack) was. It took over a half a day to knock it down, made of brick and cement blocks. You say he acted in bad faith. What do you call what you do? You know that we sustained great loss and you people saw fit to overlook same. Knock him down the sewer and keep him there.

~~XXXXXXXXXXXX~~

It seems you delight in this action because you can get more monies or extort same from this project. UDC's need for property could have been had months ago, but then you would not have a windfall. " That it is estimated if UDC is unable to obtain the premises on which defendant operates his yard, it would result in additional costs or loss of savings exceeding \$100,000, perhaps as high as \$500,000, when you know very well that this thing could have settled and was tentatively resolved before you instituted action on July 15, 1971.

Signed: Mrs. Jane Alexanian

"Agreement"

of Jan 12, 1971  
corrected form

AGREEMENT

THIS AGREEMENT, entered into as of December 31, 1970 by and among EDWARD ALEXANIAN, doing business as Gilford Sales Company, located at West 176th Street and the Harlem River, Bronx, New York ("Mr. Alexanian"), the NEW YORK STATE URBAN DEVELOPMENT CORPORATION, a corporate governmental agency of the State of New York, having its principal office and place of business at 1345 Avenue of the Americas, New York, New York ("UDC"), and the CITY OF NEW YORK (the "City"),

W I T N E S S E T H :

WHEREAS, UDC is engaged in developing a residential and park development along the Harlem River on a site (the "Development Site") directly north of certain premises (the "Premises") presently used by Mr. Alexanian, doing business as Gilford Sales Company, as an auto wrecking yard, commencing at a wooden gate and fence bearing the sign "Gilford Alexander" extending between the Harlem River and the Penn Central Railroad right of way approximately opposite 172nd Street at the southerly end of such yard and constituting the area north of such gate and fence between the River and such right of way and south

EA  
my  
mfb

Agreement

of a gate and fence opposite 176th Street at the northerly end of such yard, the northerly portion of such area consisting of Block 2884, Lot 72, and

WHEREAS, Mr. Alexanian occupies the Premises as a tenant of the City, the owner thereof, and

WHEREAS, the City, pursuant to a license and a lease with UDC covering the Premises and certain real property of the City adjoining the southerly side of the Premises, has granted UDC certain rights of access to the Development Site across the Premises, and

WHEREAS, Mr. Alexanian will <sup>depart from</sup> ~~vacate~~ a portion of the Premises so as to assure UDC convenient and continuous access for construction and development purposes to the Development Site on the terms and conditions herein specified, and

WHEREAS, UDC and the City agree that Mr. Alexanian may continue to remain on a portion of the Premises on the terms and conditions and for the period of time herein specified,

NOW, THEREFORE, in consideration of the

mutual covenants herein contained, Mr. Alexanian, UDC and the City hereby agree as follows:

1. Upon request of UDC Mr. Alexanian will <sup>depart</sup> ~~sur-~~  
<sup>from</sup> ~~render and vacate~~ the portion of the Premises within 25 feet of  
the easterly boundary of the Premises.

2. UDC, at its sole expense, will clear a free and unobstructed roadway approximately 25 feet wide connecting the northerly and southerly boundaries of the Premises lying parallel and adjacent to the railroad tracks and right of way that adjoin the easterly boundary of the Premises. In clearing such roadway UDC may demolish such structures (including the brick building and sheds presently used by Mr. Alexanian) as may be located within 25 feet of such easterly boundary. UDC shall re-  
locate to other portions of the Premises as Mr. Alexanian may  
direct such property belonging to or held by Mr. Alexanian as  
may be located within 25 feet of such easterly boundary, and will construct a fence along a line running between the northerly and southerly boundaries of the Premises 25 feet from such easterly boundary. Clearance and preparation of the roadway and  
construction of the fence will be completed by UDC within four

fence or other fence of equal or greater strength, eight feet high, will be of sufficient length to connect the presently existing fences at the two ends of the Premises and will extend such fences to the River so as to enclose such property, except on the side facing the River. UDC will maintain said fence in good repair and make all necessary repairs thereto except UDC will not be required to repair damages to the fence caused by Mr. Alexanian. The temporary access gate at the northerly end of the Premises will be repaired or replaced with new fence by UDC. A personnel gate will be located in the fence opposite the building or buildings to be located within the enclosed portion of the Premises, and a 30-foot access gate will be located in the fence between 250 and 300 feet south of the northerly boundary of the Premises. The portion of the fence in which the personnel gate is located will be indented toward the River a depth of 6 feet for a length of 50 feet to serve as a parking space for Mr. Alexanian and his customers. UDC ~~and the City~~ shall relocate existing telephone poles and telephone lines or make other suitable arrangements so that satisfactory telephone service may be provided to Mr. Alexanian at the prefabricated buildings to be located or constructed in accordance with paragraph "3" hereof. \*

mb  
Ea

3. On or prior to the date of demolition of

\* UDC will install gates across the roadway at the northerly and southerly ends of the Premises and will provide a Permit to the San Joaquin State.

mb  
Ea

the existing brick building UDC will locate or construct in a work-  
manlike manner on the Premises, at its expense, one or two non-  
defective single story pitched roof prefabricated buildings suitable  
for use by Mr. Alexanian totaling 800 square feet of floor area.  
Such building or buildings will be located 350 to 420 feet to the  
south of the northerly edge of the Premises at such place west of  
the 25-foot roadway as Mr. Alexanian may direct. The prefabri-  
cated buildings and the fence will be the sole property of UDC.  
Mr. Alexanian consents to UDC removing such buildings and such  
fence from the Premises after June 30, 1972.

4. Mr. Alexanian may continue to conduct his  
business on and occupy the portion of the Premises west of the  
25-foot roadway until June 30, 1972. UDC and the City will permit  
Mr. Alexanian peaceably to occupy and enjoy such portion and  
will not obstruct the conduct of his business thereon, pursuant  
to the terms hereof, until such date. Mr. Alexanian understands  
that construction work and traffic will be proceeding on the De-  
velopment Site and the roadway. Mr. Alexanian will ~~relinquish~~  
~~possession and his rights to possession of and~~ depart from the  
Premises completely on or prior to June 30, 1972. Mr. Alexanian  
at 171<sup>st</sup> Street and Exterior Street may erect, and leave on the Premises after his departure for a reasonable  
A

EA  
EA  
EA  
reasonable  
MP

period ~~of six months~~ a sign approximately 6' x 8' in size giving the address of his new place of business, which <sup>sign</sup> shall be subject to UDC's approval, which said approval will not be unreasonably withheld. *ea* *MB*

5. Mr. Alexanian hereby consents that the City shall have final judgment in the action of City of New York against Alexanian, presently pending in the Civil Court of the City of New York, County of Bronx, Index No. L&T 6404/70, and that a warrant or order of possession shall be issued against Mr. Alexanian, as respondent therein, and the City agrees to stay execution of such warrant or order until ~~a date not earlier than~~ June 30, 1972. *ea* *MB*

6. Upon entry of such final judgment Mr. Alexanian agrees that the relationship between him and the City of tenant and landlord shall terminate, and that his occupancy of the Premises shall not give rise to a new landlord-tenant relationship thereafter. No rent or other charge will be payable by him to the City or UDC for use and occupancy of the Premises for the period from ~~entry of such final judgment~~ <sup>November 1, 1970</sup> to June 30, 1972. *ea* *MB*

7. Mr. Alexanian agrees to remove his property from the Premises by June 30, 1972. Mr. Alexanian grants to UDC, from and after his departure from the Premises, all rights to move, sell or otherwise liquidate any such property which may remain on the Premises. UDC shall pay to Mr. Alexanian the

amount, if any, by which the receipts from any sale or liquidation by it of such property exceed the costs of such sale and the net costs to UDC of removing all or any part of such property from the Premises.

8. UDC agrees to pay to Mr. Alexanian, as a relocation payment, the sum of \$10,000, as follows:

(a) upon entry of final judgment referred to in Section 5 of this Agreement, the sum of \$3,500;

(b) upon completion of the clearance of the above-described roadway and the construction of the above-described fence, but not later than four months from the date hereof, the sum of \$3,500; and

(c) upon the permanent departure of Mr. Alexanian from the Premises and removal of his property therefrom, if such departure occurs on or before June 30, 1972, the sum of \$3,000. In the event that Mr. Alexanian leaves any property on the Premises after June 30, 1972, such sum shall be reduced by the cost to UDC of removing from the Premises any such property in excess of five ten-yard truckloads of such property.

*Mr. Alexanian*

9. Prior to and during the construction of the roadway across the Premises Mr. Alexanian will permit UDC and the City to have access to the Development Site. UDC ~~and the City~~ will cause all vehicles under 8 tons gross weight to use the Tremont Avenue Bridge until the roadway is completed unless <sup>it is</sup> impractical to do so. Mr. Alexanian will not obstruct the construction and fencing of the roadway across the Premises or UDC's access to the Development Site along such roadway. UDC and the City will not obstruct Mr. Alexanian's access to the portion of the Premises occupied by him. UDC, the City and Mr. Alexanian will cooperate so that traffic or other activities generated by any party do not obstruct the access or business of any other party. UDC will erect signs on the fence limiting traffic speed to 15 miles per hour, ~~and at Exterior Street stating "Authorized Personnel Only - No Trespassing".~~

10. Any references to Mr. Alexanian shall be deemed to include his wife, agents, heirs, successors in interest and assigns. References to UDC and the City shall be deemed to include their employees, agents, contractors, subcontractors, successors in interest and assigns.

11. Mr. Alexanian hereby waives and renounces all claims ~~for injury to person or property~~ arising from or related to the Premises he may have against the City, the UDC, their agents, contractors, subcontractors and employees from August 1, 1970 to and including the date of this Agreement. The City and UDC each and severally hereby waive and renounce all claims ~~for injury to person or property~~ arising from or related to the Premises they may have against Mr. Alexanian from August 1, 1970 to and including the date of this Agreement.

12. All notices hereunder shall be properly given if delivered by hand or sent by certified or registered mail, if to Mr. Alexanian, addressed to him at 2454 Tiebout Avenue, Bronx, New York, if to UDC, addressed to it at 1345 Avenue of the Americas, New York, New York 10019, and if to the City of New York, to the Commissioner of the Department of Real Estate, Department of Real Estate, 2 Lafayette Street, New York, New York, or to such other address, in each case, as the addressee shall advise the other parties hereto in writing.

IN WITNESS WHEREOF, the parties hereto have

executed this Agreement as of the day and year first above  
written.

*Frederick Levine* *Edward Alexanian*  
Witness Edward Alexanian

*David J. Ozerkins*  
Witness

NEW YORK STATE URBAN  
DEVELOPMENT CORPORATION

By *Samuel W. [unclear]*

*Samuel W. [unclear]*  
Witness

CITY OF NEW YORK

By *Samuel W. [unclear]*  
*for the Division Comm.*

"  
Transcript"  
"

SUPREME COURT : BRONX COUNTY  
SPECIAL TERM : PART I  
-----

NEW YORK STATE URBAN DEVELOPMENT  
CORPORATION,

Plaintiff

-against-

EDWARD ALEXANIAN d/b/a GILFORD SALES,  
Defendant  
-----

BEFORE: HON. CHARLES A. LORETO,

J u s t i c e

Bronx, N. Y.  
July 22, 1971

APPEARANCES:

DEBEVOISE, PLIMPTON, LYONS & GATES, ESQS.  
Appearing for Plaintiff  
By: STANDISH FORDE MEDINA, JR., ESQ.  
320 Park Avenue  
New York, N. Y.

J. LEE RANKIN, CORPORATION COUNSEL  
Municipal Building - New York, N. Y.  
By: JUDAH DICK, ASST. CORPORATION COUNSEL

EDWARD ALEXANIAN, Defendant,  
Appearing without attorney

Emily A. Davis  
Official Reporter

*Transcript*

THE COURT: Who is for the motion?

MR. MEDINA: I am, your Honor.

THE COURT: Will you state your motion briefly, please?

MR. MEDINA: My name is Stanley Medina, your Honor. I am associated with Debevoise, Plimpton, Lyons & Gates, representing the Urban Development Corporation. We have brought on a motion this morning for a preliminary injunction which, in effect, will give the Urban Development Corporation the right by Monday to build and use an access roadway along a strip of land which is necessary to gain access to a building project which, if not started by Monday, may cause the project to abort; and, in any event, would cause irreparable damage in terms of the monetary harm.

As your Honor may know, the Urban Development Corporation is a public benefit corporation which is vested with special powers and undertakes the design, financing, construction and operation of housing projects. One such project is the Harlem River Park project which is a major residential housing center which will be constructed along the Harlem

River shore in Bronx County. It will provide approximately 1,650 apartments, desperately needed apartments for low and middle income families.

Now, the reason for the urgency of our application, your Honor, is the fact that the entire project depends upon whether or not the Urban Development Corporation is able to obtain federal payments under Section 236 of the Federal Housing Act. These payments reduce the interest payable on the mortgage financing the project to approximately one per cent; and it is by this means that the UDC can charge rentals which low-income families can afford. To obtain those Section 236 payments, UDC must show that the construction costs of the project fall within the prescribed limits set by Section 236. To this end, the Urban Development Corporation has obtained from a qualified builder a commitment to build the project for approximately five-million dollars, a price which only barely falls within the limitations imposed by Section 236. The builder very recently, I believe either on Friday or Monday, advised Urban Development Corporation that its commitment would stand only if it could begin construction on or before Monday, July 26th. If

commencement of the project is delayed beyond that date, the price of the project would rise by as much as \$125,000.00 a week. This increase, in turn, of course may cause the construction, will cause the construction costs to rise and they may exceed the Section 236 limitations and therefore cause the entire project to abort. I should add that UDC has already spent approximately two-million dollars for architectural and engineering fees for the project; and if the Section 236 subsidy can not be obtained and if the project therefore is not built, these expenditures can not be recaptured and will represent the total loss to UDC.

Now, I have indulged in this background, your Honor, because I think it is essential to understand the problem. Let me turn to the immediate question at hand. To begin construction on Monday, the builder's heavy machinery must have access to the building site. And if I may take the liberty, your Honor, of handing up what is already attached as an exhibit to the papers, a designed plan of the project, the project being outlined in black. You will note that the project site is bound on the

west by the Harlem River and on the east by the Pennsylvania Railroad tract right of way. The site, therefore, must be approached either from the north which is to the righthand side of the picture by way of the Tremont Avenue Bridge or by the south. However, the northern route --- ? ? ? ? ?

THE COURT: Will you designate on this plan where the property occupied by the defendant is and label East Tremont Avenue there? Speak out. It is not labeled on that diagram.

MR. MEDINA: The black area, your Honor, is the project itself. The pencilled area represents the property presently occupied by the defendant who operates an automobile junkyard on that site. The Tremont Avenue Bridge is marked by pencil. Now, the northern route by means of the Tremont Avenue Bridge is not possible for heavy machinery because there is a load limitation of eight tons. Therefore, the only access route to the building site for the construction material necessary for the job, is from the southern route which necessarily must cross the property occupied by the defendant which extends completely across that southern end. The strip of

land that I marked by 'x', your Honor, is owned by the City of New York. The defendant was a hold over tenant.

MR. ALEXANIAN: Your Honor, may I stop this gentleman for a moment?

THE COURT: Will you give your name?

MR. ALEXANIAN: I did give my name, - Edward M. Alexanian, 2454 Tiebout Avenue, Bronx, N. Y., 10458.

When I came into court this morning I made an application for an adjournment and I am not represented  
by counsel and I want counsel. I ask/<sup>ed</sup> for a thirty-day adjournment and this man is going through his whole motion.

MR. MEDINA: I understood your Honor to ask me for the argument on the motion. I am sorry.

THE COURT: Yes, I want argument on the motion.

MR. MEDINA: I think it's imperative that this be decided.

THE COURT: I am inclined to believe in view of the nature of the position given by this lawyer that an adjournment such as you are asking is out of order. Now the papers indicate they have been negotiating with you for a long time.

MR. ALEXANIAN: Your Honor, may I stop you for a moment? I have a piece of paper here that takes precedence of this particular motion that he has submitted to this Court. There is a copy for the Court and there is a copy which he has. He has already received it in the mail, which is dated before the papers.

MR. MEDINA: I have seen this, your Honor.

THE COURT: The papers indicate, sir, that since August and September of last year they have been negotiating with you in order to work out a plan and a method whereby they could proceed with this project.

MR. ALEXANIAN: Your Honor ---

THE COURT: (Cont'g) And access over your property.

MR. ALEXANIAN: That's true. They have the access.

THE COURT: What kind of business do you operate there?

MR. ALEXANIAN: An automobile wrecking yard.

THE COURT: Yes.

MR. ALEXANIAN: But they have the access. They

are proceeding today still with the access at  
this very moment. They can get the access whenever  
they want. On July 15, 1971, two attorneys and the  
project manager were up there offering me money. We  
made an agreement. The agreement was made on July 15,  
1971, but before they went away I asked the project  
engineer, I asked him, "The bulldozer knocked my  
fence down; what are you going to do about it?"  
He said, "That will be repaired before the day is  
out." It wasn't. On the 16th of July, counsel for  
the plaintiff here called me on the telephone and  
I rejected the agreement.

MR. MEDINA: You are not referring to me, are  
you?

MR. ALEXANIAN: No, sir, I am not - counsel for  
the New York Development Corporation. Now, your Honor,  
they took four months away from me. This job was  
supposed to be complete by April 30th. They were  
supposed to make a payment before April 30th.

THE COURT: A payment to you?

MR. ALEXANIAN: That's right. That payment did  
not come through until July 10th.

THE COURT: You received a payment?

MR. ALEXANIAN: I did, sir. Now, we have gone  
through five agreements, five agreements. They do  
not keep their word. I am ready to move. I am  
ready to move on immediate notice but certainly I  
don't think there is a law in this state that says  
that I, born in New York City, in the Bronx, a resi-  
dent for 57 years, must go into a building which I  
don't like, which is not habitable, which has not been  
inspected. It is contrary to the state laws; it is  
contrary to the city laws. The building is absolutely  
no good and I don't think there is a court that can  
make me move in there and live in it. I am not on  
welfare. All I am asking them to do is live up to  
their agreement. They gave me this thing; I received  
it 11:00 a. m. yesterday morning. Yesterday morning  
the superintendent sneaked over on the site there  
yesterday morning. This was all underhanded. As a  
matter of fact, this particular time a fence is being  
built and is not being built where it is supposed to  
be. Now I need thirty days. I have to get photogra-  
phers; I must get a good attorney, as good as they  
have, to be able to answer this. This is a very big  
manuscript. There are falsehoods here. There is

nothing in here they can prove. I need witnesses, I need subpoenas and I can not do that. < < \*

Now, I understand this a little bit. You can not tell a man that I am going to run you over with the car; after I hit you with the car, I will pay you damages. And, in essence, that is what it is. They want to pay me and I don't want to accept the money.

MR. MEDINA: Your Honor, may I put this in the record?

THE COURT: You are a tenant of the City of New York. You have a junk business there. This operation must go forward. He said that there will be a loss of \$150,000.00 or thereabouts.

MR. ALEXANIAN: Your Honor, \$125,000.00 a week and that was in October 1970. We multiplied. He lost two-million dollars; that's because of me? < < \*  
Are they builders? In the lower court downstairs one of his attorneys came in and told Judge - I forget the Judge's name--he said, "My wife is having a baby and this man is stopping me from being able to move into that house." What kind of lawyers are these

THE COURT: What about payment to this man?  
What do you have to say about expediting that?

MR. MEDINA: Your Honor, let me attempt in one minute to put it into perspective.

THE COURT: Yes.

MR. MEDINA: We are not asking to evict this man; we are asking access rights along a 25-foot strip which borders one side of this property. He has the use of the remaining eighty per cent. We have in good faith attempted to comply with the agreement to which he refers and which is attached as an exhibit to the motion papers. We have built a new office shed for him which we believe is exactly according to specifications. We have built the fence. We have made several thousand dollars in payments and the builder has made ---

THE COURT: How much has he been paid?

MR. MEDINA: He has been paid so far seven-thousand by UDC and by the builder. Now, what we propose to do, your Honor, with the Court's consent, is to get this roadway completed and construction built Monday. We are prepared to put up a bond immediately to protect him against whatever slight damage he might

suffer from having to use an office that for some reason doesn't ---

THE COURT: How much bond will you put up?

MR. MEDINA: Whatever your Honor deems necessary - \$5,000.00.

THE COURT: How much?

MR. MEDINA: \$5,000.00.

MR. ALEXANIAN: \$100,000.00 in cash bond. My life is at stake. You are using ---

MR. MEDINA: I have witnesses in the courtroom.

MR. ALEXANIAN: I am sorry. You are using inferior working men. The contractor gave me \$7,500.00 and he stole two-thousand dollars worth of my material.

THE COURT: How much rent do you pay?

MR. ALEXANIAN: I don't pay any rent at all at this particular time.

THE COURT: You don't pay any rent?

MR. ALEXANIAN: No, sir. Your Honor, the question is that they are going to force me into a building that has not been inspected.

THE COURT: Would this access road or pathway

that you seek - 25-feet wide - interfere with his operations?

MR. MEDINA: Not to our knowledge, your Honor.  
The one thing that has to be done is to remove ---???

THE COURT: I will grant this application.

MR. ALEXANIAN: Your Honor --- ??

THE COURT: Just a moment, sir.

MR. ALEXANIAN: I am not represented by counsel.

THE COURT: Well, you could have had. ??

MR. ALEXANIAN: Then I shall leave here.

You can give your decision and I will go right down  
to --- \_ \_ ? \_ ? \_ ? \_ ? \_

THE COURT: A \$10,000.00 bond and any hearing on  
damages will be taken up expeditiously early in  
September.

MR. MEDINA: Your Honor, I have a draft order  
which in effect does that.

THE COURT: Submit it. I will look at it during  
the day.

COURT CLERK MORRIS SCHWARTZ: Marked submitted.

THE COURT: The Order shall contain a provision  
whereby damages that this man claims, will be heard  
and determined early in September. Submit bond.

MR. MEDINA: I got the bond with me.

THE COURT: Submit the bond today.

---o0o---

I do hereby certify the foregoing to be a  
true and accurate transcript of the stenographic  
record. Emily A. Davis

Emily A. Davis  
Official Reporter

"July 23, 1971 Transcript"

SUPREME COURT : BRONX COUNTY  
SPECIAL TERM : PART I  
-----

NEW YORK STATE URBAN DEVELOPMENT

CORPORATION,

Plaintiff

-against-

EDWARD ALEXANIAN d/b/a GILFORD SALES,

Defendant  
-----

BEFORE: HON. CHARLES A. LORETO,

J u s t i c e

Bronx, N. Y.  
July 23, 1971

APPEARANCES:

DEBEVOISE, PLIMPTON, LYONS & GATES, ESQS.  
Appearing for Plaintiff  
By: STANDISH FORDE MEDINA, JR., ESQ.  
320 Park Avenue  
New York, N. Y.

Emily A. Davis  
Official Reporter

THE COURT: Mr. Medina, last night I know  
you tried to reach me by telephone at my residence,  
and unable to reach me, you reached my secretary  
and informed him of not only the difficulty, the  
complete frustration that you and your assistants  
had attempting to effectuate the service of the Order  
I signed in this matter. You also described the  
dilemma and the plight you were in and the utmost  
urgency that's required to bring about the opening of  
a pathway to proceed with the work that is undertaken  
by the plaintiff in the construction of this  
55-million dollar housing unit on the Harlem River  
site.

The papers adequately indicate that the  
defendant has done all in his power to impede,  
obstruct, and frustrate the attempt on the part  
of the plaintiff to proceed with his work although  
agreements have been entered into with him, not only  
for his complete removal from the site but also to  
permit the opening of this pathway so that the heavy  
vehicles could go through to the site which can not  
enter the south from any other avenue or approach,  
including Tremont Avenue; that he was paid seven-

thousand (\$7,000.00) dollars by the plaintiff and  
a new shed office - if it's called that - has been erected by the plaintiff for him to transfer what is in the present shed or office that is in the pathway of this 25-foot strip that's needed.

While your papers recite much more, I think that's enough. Moreover, any damages that he might claim over and above what's been paid, I have indicated he can present for hearing and determination promptly and also require that bond be executed and filed; and it has been, bond in the sum of ten-thousand (\$10,000.00) dollars as further indemnity if he were to need any.

Now, will you state for the record your position on the efforts made in the service of the Order?

MR. MEDINA: Yes, your Honor, I would be glad to.

Mr. Vincent Argiro, the superintendent for the contractor, after the order was signed yesterday, returned to advise the workmen that had been standing by that continuation of the roadway and the

removal of the old office could not take place until Saturday. Upon arriving at the site, he discovered that the old gate and fence which presently surrounds the property had been closed and a lock put on the gate. In addition, there was a sign on the gate which said 'beware of the dogs.' I am advised by Mr. Argiro that the defendant owns three watchdogs and we can only presume that they were either inside the property or inside the structures on the property. Mr. Argiro phoned me at my office sometime after four o'clock to tell me this information at which time we went through our files to see if we could locate the home address of the defendant and we were able to do so. At that time our managing clerk, Mr. Joseph Schnabel, with two copies of the Order and Notice of Entry went to the Bronx, firmly affixed one copy to the outside of the gate and then went to the defendant's home. He knocked on the door but no one answered and he therefore affixed a second copy of the Order and Notice of Entry firmly to the door of the defendant's residence. It was at that point, not having been

able to effectuate personal service or to attach the copy to the outer door of the defendant's office shack, that I attempted to and did reach Mr. Quattrochi to ask his advice as to how we should proceed since the service did not technically comply with the requirements of the Order signed yesterday.

THE COURT: I consider the service made to be better than that which had been specified in the Order and I shall deem the Order for Service amended nunc pro tunc to provide service in the manner which it has been effected instead of the service that has been made.

Later:

THE COURT: I have put an endorsement on here. You may conform it. I have written here: 'Upon the papers and proceedings herein and the statement of Standish F. Medina, Jr., Esq. upon the record, the foregoing Order is amended as to service only nunc pro tunc so as to provide for its service by affixing a copy thereof to an outer gate of the premises described herein or affixing the same to the outer door of the defendant's last known residence failing to effect personal

service upon him.

A long form Order to this effect may be  
entered. I have initialed it, dated it, and put  
the time - 7-23-71, 11:00 a. m.'

---o0o---

I do hereby certify the foregoing to be true  
and accurate. *Emily A. Davis*

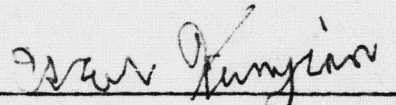
Emily A. Davis  
Official Reporter

STATE OF NEW YORK )  
County of BRONX ) ss.:

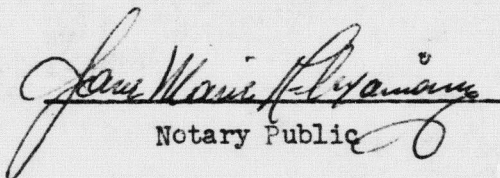
Affidavit of Service by Mail

OSCAR KUMJIAN, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides ~~at~~ at 1932 Crotona Avenue, Bronx, New York.

That on the 29<sup>th</sup> day of November, 1976, deponent served the within papers upon Barrett Smith Schapiro & Simon, 26 Broadway and, Debevoise, Plimpton, Lyons & Gates, 299 Park Avenue, and Mele & Cullen, 150 William Street, all of New York, New York, who are the attorneys for the Defendants-Appellees in this action, at the addresses designated by said attorneys for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrappers in a official depository under the exclusive care and custody of the United States Postal Service within the State of New York

  
Oscar Kumjian

Sworn to before me this  
30<sup>th</sup> day of November, 1976.

  
Notary Public

JANE MARIE ALEXANIAN  
Notary Public, State of New York  
No. 03-5044050  
Qual. in Bronx Co. Cert. filed with  
Bronx County Clerk  
Commission Expires March 30, 1978